EPA Hearing

Los Angeles

November 30, 1999

MS. NEWMAN: Good morning. I want to welcome you here today for this public meeting on EPA's proposed rule to lower the reporting thresholds for lead, under the Toxics Release Inventory. I've got… Well, my name is Amy Newman. I'm the Acting Branch Chief for the TRI Regulatory Development Branch at EPA. And I've got Tom Boer from our Office of General Counsel, at the US EPA here with me, and Cody Rice, who is the economist that worked on this proposed rule, the economic analysis for this proposed rule.

I want to thank you again for taking the time to attend this meeting. We're looking forward to hearing your comments on the proposal. But before we begin, we had prepared just a few slides to give you some background on the rule, if that would be helpful to people. I was going to give some background on the lead proposal, and Cody was going to summarize his economic analysis, and then we will go ahead and hear your comments. Actually, I should ask first, we had two people who indicated they were interested in giving formal comments, or providing testimony, James Twerdahl and Jonathan Parfree, I don't know if I'm saying that right, from Physicians for Social Responsibility, are there other people here who wanted to provide… Okay. I'll just write down your name [unintelligible]. You'll be third if it's okay. And your name was what?

MALE VOICE 1: My name is Marvin. The last name is spelled S-A-C-H…

MS. NEWMAN: Oh. I've got it here.

MALE VOICE 1: Also, I called in.

MS. NEWMAN: You may have called in yesterday or…I don't know. Okay.

MALE VOICE 2: Dennis Maggi.

MS. NEWMAN: Okay. Great.

MALE VOICE 2: [unintelligible]

MS. NEWMAN: Okay. All right. And if anybody else decides… Oh, go ahead. Your name is?

MALE VOICE 3: [unintelligible]

MS. NEWMAN: Okay. We'll go ahead with giving some of the background for you, and then we'll start after that, with James Twerdahl. One of the most important things first, is to give you guys the bathroom codes if you need to use the men's and ladies room. The ladies room is 1414. And the men's room is 2…you have to press 2 and 4 at the same time, right? And then 1? Okay. Two and four at the same time, and then press one.

Before I launch into the background on the lead rule, I just want to mention, and many of you may already know this, back in January of this year, January of 1999, EPA proposed a rule to add certain persistent and bioaccumulative toxic chemicals to the Toxics Release Inventory, and also proposed to lower the thresholds for those new PBT's on the list, and for some of the PBT's that are currently on the list. And we lowered the reporting thresholds to 100 pounds for persistent and toxic chemicals, and to 10 pounds for highly persistent and highly… Oh, I said that wrong. I'm sorry. For highly persistent and highly

bioaccumulative chemicals, we lowered the reporting threshold to 10 pounds. We lowered it to 100 pounds for persistent and bioaccumulative chemicals. In that proposal, we did not propose to lower the reporting threshold for lead; however, we did request comment on that subject in that rule.

After proposing that PBT rule in January, we've obtained some additional information which lead us to determine that it was important to lower the reporting threshold for lead because it's highly persistent and highly bioaccumulative, so we proposed this rule in August of 1999, to lower the reporting threshold for lead. A lot of the provisions in the rule to lower the threshold for lead are pretty much the same as you would see in the PBT rulemaking. So we basically are treating lead as another one of the PBT's. We did actually finalize the rulemaking, lowering the threshold for PBT's at the end of October of this year. Anyway, we're still in the comment period for the lead proposal. The comment period closes December 16th, and we're obviously holding these public meetings in order to obtain comments on that rule. And we're also seeking written comments on the various aspects of the rule that we've requested comments on. So let me just go through some of just the general background on the rule.

Basically, in this rulemaking, we've proposed to lower the reporting thresholds for lead and lead compounds. We've also modified the applicability of the Form A, which is a

simpler reporting form that we have under TRI. Basically, we're proposing not to allow the use of Form A for reporting of lead and lead compounds. We are also proposing to eliminate the de minimis exemption and the range reporting that we have for other chemicals on the TRI, under this proposal. Also under this proposal, we're requiring the reporting of all releases and other waste management quantities that are greater than a tenth of a pound. And we are limiting the reporting of lead when it's contained in stainless steel, brass, or bronze alloys.

In this slide, we've just basically summarized the available data on the persistence fate, and the bioaccumulation data for lead and lead compounds. Lead is highly persistent in the environment, and under many environmental conditions, it's bioavailable. This bioavailability of lead in the environment is confirmed by the data on the bioaccumulation of lead in aquatic organisms, and in humans, as a result of the environmental exposure. Then the data that we have, indicate that lead is highly bioaccumulative in several aquatic species. There's also a considerable amount of information on the accumulation of lead in humans, including children who are most susceptible to the effects of lead. So overall, the available data just support the conclusion that lead and lead compounds are highly persistent and highly bioaccumulative. As I mentioned, when we developed the PBT rule, we decided that compounds that were highly persistent and

highly bioaccumulative, we would reduce the reporting thresholds to 10 pounds. So that's what we're proposing to do for lead here.

Basically, the rationale behind the lead rulemaking, and the rulemaking on other PBT's, is that these compounds are highly persistent and highly bioaccumulative, so any release can result in elevated concentrations in the environment, and in organisms. And as a result, there can be adverse effects, both on human health, and the environment. Looking at the bioaccumulation data and the persistence data for lead and the other PBT's, EPA felt that it would be appropriate to lower the reporting threshold to something close to zero for those compounds that are highly persistent and highly bioaccumulative. But because of the great burden that that could impose on reporting facilities, we decided to use a 10 pound reporting threshold instead, to make it more reasonable.

Just to reiterate some of the other provisions of the rule, aside from just lowering the reporting threshold, again under this rule, we are proposing to eliminate the de minimis exemption, as we've done for the other PBT's, under the final PBT rule. For those of you who aren't familiar with it, the de minimis exemption, under TRI, allows facilities to ignore certain quantities of toxic chemicals if they're present in mixtures at established de minimis concentration levels, and that's 1% for most chemicals. It's .1% for carcinogens on the OSHA carcinogen list. And again, the pro-

posed rule excludes lead and lead compounds from the alternate threshold of 1 million pounds that we establish for using the Form A, so that would not be available for facilities that are reporting on lead now. Also, the rule states the facilities will be required to report numerical values, and not ranges, for lead and lead compounds, and that again is a change from the current TRI requirement for the other toxic chemicals on the list. And again, the rule states that all releases and other waste management quantities greater than a tenth of a pound of lead or lead compounds be reported, provided that the facility manufacturers, processes, or otherwise uses more than 10 pounds of lead or lead compounds annually. And under our current requirements, a half a pound or less, can be rounded to zero when you're reporting under TRI, so we've changed that requirement.

Finally, as I mentioned before, we're proposing to limit the reporting of lead when it's contained in certain alloys, stainless steel, brass, and bronze. The reason for this is that EPA has several petitions, and is in the process of evaluating some petitions that address this issue of reporting on lead in certain alloys. Or actually… I'm sorry. The petitions are actually broader than that. They address the issue of how metal is contained in certain alloys, specifically stainless, brass, and bronze, how they should be reported under Section 313. And given that we're in the midst of that evaluation, we thought it was appropri-

ate not to make any changes to the reporting of lead that's contained in those alloys at this point. So the lead contained in those alloys will still be subject to the current reporting thresholds of 25,000 pounds for manufacture or process, and 10,000 pounds for otherwise use of the chemical.

So that's it in a nutshell. And Cody is going to try to summarize the economic analysis. And one of the reasons that we're focusing some on that, is that there have been a number of concerns raised in the last few months regarding the economic analysis, and the potential impacts of the rule on small businesses. For those of you that got the Federal Register notice, or the other notice on the rule, we are particularly interested in hearing about this issue of small business impacts, and of course other comments on the rule as well. But anyway, I will turn it over to Cody.

MR. RICE: Hello. My name is Cody Rice. I'm an economist in EPA's Office of Pollution Prevention and Toxics. The topic of my talk today, as shown on this overhead, "Commenting on the Economic Analysis of the TRI Lead Proposal." The reason that I'm making this presentation today, is that I'm the person who's responsible for the economic analysis of the proposal, and I'm also one of the folks who'll be reviewing the comments on the proposal. And I'd like to start off by saying I'm really looking forward to your comments, since you folks have experience reporting to TRI, or experience using TRI data, and we hope to benefit from your expertise.

There are four main topics for my presentation today; they're shown on this overhead. The first is, "What is the Purpose of the Economic Analysis in the Rulemaking Process?" The second is, "What are the Major Components of the Economic Analysis?" The third is, "How Can the Public Contribute to the Economic Analysis?" And finally, "What are the Potential Areas for Public Comment in the Economic Analysis?" I hope to move through these topics quickly so we can get straight to your comments today, and I expect this'll take about ten minutes. If you have any questions, I'll be glad to take them after the presentation, or after your comments.

The first topic is, "What is the Purpose of the Economic Analysis." There are three main reasons that EPA conducts an economic analysis for a proposed rule. The first is to provide information during the rulemaking process, on the benefits, the cost, and the distributional effects of options that are under consideration. Secondly, an economic analysis is required to meet the requirements of various statutes and executive orders. And finally, the economic analysis serves to inform the public of data and methods that EPA is using, offering an opportunity for comment, and offering the public a chance to provide more information in the process, so EPA can make better decisions.

The next topic is, "What are the Major Components of the Economic Analysis?" So if the economic analysis is supposed to bring

information into the rulemaking process, what sort of information are we talking about? There are four main components of the economic analysis. As shown on the slide, these are estimating the number of effected facilities, which involves predicting the number of TRI facilities that will report as a result of the proposed rule. In this case, we have estimated the number of additional reports that EPA would receive, at four lower reporting thresholds for lead. So we looked at a 1000-pound threshold, a 100-pound threshold, a 10-pound threshold, and a 1-pound threshold, to try to determine the number of additional reports that EPA might get. I should point out that TRI facilities are found in manufacturing industries, as well as electric utilities, petroleum bulk terminals, and a few other SIC codes. I should point out that TRI reporting does not come from construction or contracting firms, dentists, plumbers, or individuals who use lead. There's a certain class of facilities that are subject to TRI reporting. At the 10 pound reporting threshold, we estimated that about 15,000 facilities would file new reports on lead and lead compounds. Of these, we estimate that about 5,100 would be from facilities filing their very first TRI reports. I should point out, in the economic analysis, we identified a number of industries for which we didn't have enough information to make a quantitative estimate of the number of additional reports. And we've asked for a comment on that in the proposal.

The next area of the economic analysis, is estimating the cost of the proposal. And this was done by applying our estimates of the number of hours it takes to report to TRI for a facility, to the number of effected facilities, and to the wage rates at those facilities. I should mention here that facilities are only required to use readily available information or reasonable estimates, in reporting. The rule does not impose any additional testing, monitoring, or analysis requirements. At the 10-pound reporting threshold, we estimated industry costs of 116 million in the first year, and 60 million in subsequent years. We think that reporting costs decline as facilities become more familiar with the reporting requirements as time goes on.

The third area is estimating the distributional effects of the proposal, which involves assessing the potential effects on minorities, low income populations, children, and small economic entities, such as small businesses. We have found that in the rules that require industry to take some action, in this case, report releases and other waste management of lead and lead compounds, the potential impact on small businesses often receives the most scrutiny. To assess the potential impact on small entities, we looked at what the potential impact of filing one TRI report would be on facilities with ten or more employees, these are the facilities that would be required to report. To do this, we modeled the revenues of small and large companies in industries that

are likely to report. We then compared our estimate of reporting cost at the company level, to estimates of revenue for typical small and large companies with low, medium, and high revenues. Based on this methodology, we didn't find any instances of small or large companies that would be affected at an impact level of greater than 1% of revenues. This was not really a surprise, given that the proposal requires a maximum of a single report per facility, that no additional testing or analysis is required, and that facilities are not required to change any production processes. They're only required to report, and that the very smallest facilities, those with fewer than 10 full time employees, are exempt from reporting.

The final area is estimating the benefits of the proposal, which involves describing the type of information that will be reported, as well as the potential users of the information. Over time, the Toxics Release Inventory has proven to be one of the most powerful tools, from powering the federal government, state and local governments, industry, academics, environmental groups, and the general public, to participate in an informed dialogue on the environmental impacts of toxic chemicals in the US. TRI enables interested parties to establish credible baselines, to set realistic goals for environmental progress over time, and to measure progress in meeting these goals. Our assessment of the potential benefits is a qualitative assessment, not a quan-

titative assessment. In other words, we're not able to assign a dollar value to the benefits of each additional report, in the same way that we have assigned a dollar value to the cost of each additional report.

Well, I hope you're all still awake after that riveting description. The next topic is, "How Can the Public Contribute to the Economic Analysis?" It would be very helpful to us if the public could comment on the data, the assumptions, and the methods that we used in the economic analysis. Basically, anything in the economic analysis is fair game for public comment. And if you have any information that would help improve our assessment of the effects of the proposed rule, either the cost, the benefits, or the impacts on small businesses or other small entities, I strongly urge you to share that with us today, and in written comments.

I'm hoping that most of you who have an interest in the details of the economic analysis, were able to obtain a copy, either from EPA's website, or from the EPCRA hotline, before this meeting. And if you haven't, and you have access to the Internet, you can get a copy at the URL that's listed on this slide up here. And this Internet address and the phone number of the EPCRA hotline can also be found in the text of the notice that announces this public meeting.

MS. NEWMAN: And this also has… The rule is there, and all the other TRI stuff too.

MR. RICE: Right. Exactly. The rule is also available at this website, and other things related to the proposal.

MS. NEWMAN: Does anybody still need that up?

MR. RICE: Finally, I'd like to move into a description of some areas in the economic analysis that you may wish to address in your comments. As I said before, this list is not exhaustive. You may want to look at the notice for this meeting, and at the proposal itself, for other potential areas of comment. The first potential comment area is the number of effected facilities. We would like to know, are there additional types of facilities effected by the proposal that we haven't identified, what sorts of activities involving lead are undertaken at these facilities, are these activities common, and how many facilities conduct these activities. And finally, how much lead is used or released by facilities of various sizes in this industry. If you have information of this sort, that we haven't identified yet, it would really help us assess the number of effected facilities.

In terms of the cost of the proposal, has EPA correctly characterized the number of effected facilities, and the number of first time filers; are there other data that EPA should consider; based on your experience with TRI, how long does it take to prepare a report, what factors influence this; are activities more, or less complicated at small facilities; is there something that we should consider

about the cost of the proposal, in terms of small versus large facilities. In terms of distributional impacts, what are the revenues of small firms with facilities that would be required to report; are there other data that EPA might use to estimate the revenues of these firms; would a rule that requires reporting on one chemical, using readily available information, or reasonable estimates, have a significant economic impact on small businesses with ten or more employees.

In terms of the benefits of the proposal, what are the benefits of increased lead reporting in your community, if you have any specific examples that you'd like to share with us; are there TRI facilities in your community, for which you have no information on lead releases and waste management, due to the current threshold levels or exemptions; in the absence of legal requirements, do you find that facilities are willing to voluntarily provide information on chemical releases; do you think that facilities can reduce lead pollution effectively, without evaluating their current releases and other waste management techniques; do you think this information should be shared with the public; do you think that additional reporting on lead and lead compounds under EPCRA would be valuable to the users of TRI data.

Finally, and this is my last slide. In terms of burden reduction, do you have any recommendations for reducing the burden on small businesses; should EPA exempt small busi-

nesses from reporting on lead, and if so, why; should we exempt reporting on certain quantities of lead at low concentrations; if so, why; should we select another threshold other than the one that was proposed, the 10 pound threshold, and any reasons for that. And with that, I'll conclude my presentation. If you have any questions, I'd be glad to take them. And if you would like a more detailed explanation of any part of the economic analysis, I'll be available during breaks, and after the meeting. Thanks.

MS. NEWMAN: Okay. I think the first person we have, is Mr. Twerdahl. Do you mind speaking up there, since we've got the microphone for this court reporter?

MR. TWERDAHL: Good morning, I'm Jim Twerdahl. I am the President of Coloramics, which is a company that manufactures ceramic glazes, using lead and lead compounds, under the brand names Mayco and Ceramichrome. Our products are sold to hobbyists, to schools, to artists, to potters, and to all sort of people that like to practice ceramics as a hobby. Ceramichrome is a 60-year-old company. Next year, Mayco will be 50 years old. But the combination of these two companies, our total company still qualifies as a small business under the SBA guidelines. I am also here to represent our customers. And we sell to about 335 distributors who in turn sell to about 10,000 home studios that have kilns, and do ceramics at home. I am also the official representative from the Contemporary Ceramic Stu-

dios Association that has about 240 members. And there are about 1000 Contemporary Ceramic Studios in the country today, in addition to the 10,000 traditional ones.

I'm sorry I don't have a more formal prepared statement, but I only found out about this a couple of weeks ago, via another trade association, through the Society of Glass Decorators. And I think there would be a lot more people here, had there been more notice, and if companies like ours, and trade associations had been notified that this was even under consideration.

The use of lead-bearing glazes is almost as old as recorded history. You know, pottery was found in the tombs of Egypt, in the caves of China and France. We you have Thanksgiving Dinner, if you used your grandmother's china, I would almost guarantee that it was manufactured using a lead-bearing glaze. And yet, you're all still alive to tell the story. Lead is used in the manufacture of glazes, to give glaze finishes a very smooth clear surface. And it is required, to get really rich deep reds and oranges and yellows, and other colors. We would not have the Mona Lisa, or the Cysteine Chapel ceiling, if we did not have lead in art materials. As you may know, there's a specific exclusion in the regulations regarding the manufacture of house paint, that exclude art materials specifically because people finally realized that we would not have great works of art in the world if we did not have lead-bearing products.

Very importantly, in my 10 years in this industry, and in my company, 60 years, we have never heard of one legitimate case of environmental damage being done by our industry, in the use of leaded glazes. In Ceramichrome's 60 year history, it has never been involved in a product liability suit. Mayco has been involved in a couple, but both of those we believe were fraudulent attempts by people who extort money from insurance companies, and from manufacturers, who have had no basis really, in fact. It's a very, very safe hobby, and has had virtually no environmental impact. And our position, I think is, if there has not been a problem that has been created, why are we imposing potential reporting requirements when the problem doesn't exist in the first place?

Perhaps you need a little bit more understanding in terms of how ceramic glazes are used. The vast majority of our products are sold in 2-ounce jars, and 4-ounce bottles. So we're not talking about great things where there can be big massive cleanups and spills, and other kinds of things. Consumers take these little jars of paint, and paint them on ceramics, and then fire them in a kiln. And the vast majority of those firings are done in a way that the FDA then says those products are perfectly safe to use for food and other things, even though they do have some release of lead over time, especially if they are holding the acidic compound zoen [phonetic]. But there have been millions and millions of pieces made every year, ceramic pieces, decorated

glass and other things, using lead-based compounds that are in use by all of us in our homes everyday, without any negative environmental impact, and without any real adverse health impacts. If you were to measure the sewer outflows in schools, and in potter studios, and ceramic hobbyist studios, and contemporary studios, I would almost guarantee you that you could not measure an increase in the amount of lead in their waste water, versus others, because they use lead compounds in their facilities. There is a very, very small amount that is required when you're cleaning out a brush, or scraping some off of a pallet.

Lead is found as a trace element in almost everything that we use. And in fact, we do not call our non-toxic glazes lead-free, even though our certified toxicologists have said we certainly could call them lead-free, but we do not because there are trace elements of lead in them. And when we started thinking about the trace elements, virtually any business that uses a great deal of water in the processing of its products, would probably now have to report because of the elimination of the de minimis rules. I was talking to a clay manufacturer, and even our own manufacturer of glazes, every glaze that we make is made with water. There is lead in the water that we get from the city that we manufacturer our products in. And over the course of a year, we'd have kind of a "back of the envelope" calculation, and we think that we're getting more than 10 pounds of lead per year from the city, in the

water used in our manufacturing.

Also, the ability to measure lead is almost impossible. And the definition of how to measure it is also very, very difficult. We have various lead compounds where the lead has been encapsulated so it is not released, and is therefore not bioavailable. So I don't know how you measure the difference between bioavailable lead and non-bioavailable lead in a normal commercial setting. We produce about 30 batches of glazes a day, that's about 6000 a year. To try to measure the lead content in each one of those would be an intolerable burden. The customers that we sell to that use leaded glazes in their business, either as the base glaze that has color, or as a clear glaze, to finish, are probably all using in excess of 10 pounds a year because it's suspended in liquid. Now if you were to drink massive quantities of this liquid, they would become toxic, and all of the bottles are labeled with appropriate health warnings. But again, there have been virtually no substantiated incidences of there being any problems.

You ask about the number of people that would have to report for the first time. I believe in our industry alone, it would be in the thousands, because there are thousands of people that were even below your horizon in terms of understanding the uses of lead. And if you add the glass decorators to that, and the fine art materials people to it, the people that make oil paints for doing canvas, and so on, you're talking about a huge number of art-

ists and studios, and others, that you would be putting in…endangering their livelihood. If it truly would cost about $7,000 a year to do the reporting, that is greater than the profit of virtually all of the customers in our industry. Even if there were studios that were doing $700,000 a year… The average contemporary studio, for example, we did a survey last year, it is $162,000 in annual revenue. Now many of those still have ten employees because they're part time employees. They hire a lot of college kids, and so they come and go. There are virtually none over three-quarters of a million. Traditional home studios, there are probably none with revenue over $100,000. But they have all used leaded glazes safely for 60 years. Even if the $750,000 minimum target was observed, and you said it would only cost 1%, that 1% would be $7,500. And even if one of our businesses could make 10% on their sales, that would represent 10% of their profits, and I don't know any of them that make that much money. So it would be an awful lot more than that, denying them both, of their livelihood, because these are pretty small, struggling businesses. I mean you've heard about starving artists, that's a real story. But it would be a massive amount of their profits, and it also would deny the government and local agencies tax dollars on those profits, and everything else. So it is adding a burden, and in my opinion, without any real benefit.

So to conclude, there really are no environmental problems as a result of leaded

art materials that I'm aware of. They are safe to use if just commonsense is followed. Leaded art materials, both in manufacture, and in use by consumers, are safer than the vast majority of things you'll find under your kitchen sink, they are a lot safer than the vast majority of things that you'll find in your medicine cabinet, and we don't report on the use of those things. And sure, we don't believe a reporting requirement is required at all, and this whole thing should be reviewed very carefully. Thank you.

MS. NEWMAN: Okay, we have Jonathan Parfree. Is he here yet? Hadn't signed in? Okay. Marvin…

MR. SACHSE: Sachse.

MS. NEWMAN: Thank you. Sachse.

MR. SACHSE: Good morning. My name is Marvin Sachse. I'm a state licensed professional engineer, ISO-14000 auditor. I represent a small electronics assembly house. I have managed printed circuit board fabrication facilities, and I work with the California Circuits Association. It is our opinion that changing the reporting threshold for lead will do little to improve the public Right-to-Know information associated with this program. The cost of accounting cannot be justified, considering the limited threat to the environment and human health, associated with industrial lead usage. The US EPA, IRIS database, which is on toxicity, indicates that lead has not been quantified as a human carcinogen. Lead is a naturally occurring element, and is available

to all eco systems. Reporting it does not change its persistence or presence, and availability to the environment.

The question I have, has the EPA analysis on the bioaccumulative aspects of lead, considered the pathways in which lead can harm human health, and the environment? It is not absorbed dermally, or by inhalation. It's primary method of entry to the body, in representing human health risk, is by ingestion. Has any study demonstrated that the lead absorbed from bioaccumulation has been released by industrial purposes, or from the naturally occurring elements that have leached from the soil, through storm water runoff? Have we really traced that this is an industrially released element that is in the environment?

I do not see the advantages of having a facility to report that they have used 10 rolls of sodder in the electronics assembly area. This seems to be inconsequential in terms of representing any form of human health risk. Certainly lead is prolific in the environment; are we going to have to start reporting car batteries in our automobiles, which have approximately 20 pounds of lead? They too, can pose the same risk, as with lead used in sodder. The focus here is that the lead is not being exposed to the workers, it's in the environment, in a public Right-to-Know form. Certainly the "25,000 pound annually" number all of the sudden being reduced down to 10 pounds a year, puts it in the category as being managed as an acutely hazardous waste. Lead is

not an acutely hazardous waste. Certainly, in terms of risk to the environment, and the need for public Right-to-Know, there appears to be little advantage, or importance, in decreasing the threshold for lead reporting. Thank you very much.

MS. NEWMAN: Thank you. Dennis Maggi.

MR. MAGGI: Good morning. My name is Dennis Maggi. I'm the Executive Director for the IPC-California Circuits Association. IPC-California represents over 400 member companies that manufacture printed wiring boards, and attached electronic components, such as computer chips to bare boards. This industry nationally employs over 330,000 people, and exceeds over 23 billion in sales, and is a vital component to the US economy. Currently, these boards are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. This industry, again, is vital to the US economy. Over 95% of the IPC-CCA members are considered small business by the definition. If this regulation was imposed on our industry, it would require almost all of the companies to report for the first time, at an estimated cost of $7,000 per year.

Currently, the IPC is working nationally on reducing the lead in the computer boards itself, and so we're trying to regulate our own industry. And we feel that a lot of what the EPA is doing, would significantly impact our ability to continue that effort. Un-

fortunately, given the lateness of the notice, I called several of our member companies, and had them to come and testify today as well. And unfortunately they were unable to, given the holiday and everything. But I have asked them to forward me comments, so that I can then make sure that they're forwarded to you as well. Again, I would just like to stress that if in fact this regulation was imposed, that it would considerably impact the small businesses here in California, with the proposed requirements to report to TRI. And that's all I'd have to say.

MS. NEWMAN: Just one question. Can you talk just a little bit more about what it is that you're working on to reduce the lead in your… I think you said in the components.

MR. MAGGI: Well, IPC just held a national conference in Minneapolis, specifically on lead-free components. And what we are trying to do is, we're trying to work with the industry in California, and globally, to reduce the lead that is contained on electronic wiring boards. And we're trying to find other components, other than lead, to make this work.

MS. NEWMAN: Does it appear there are good substitutes?

MR. MAGGI: I'd have to get back to you on that. Unfortunately I wasn't able to attend the conference, but Holly Evans, who is our legislative analyst, and works very closely with the EPA in Washington, would have more information on that, and I can definitely ask her to provide that to you.

MS. NEWMAN: Leonard Levin.

FEMALE VOICE 1: He stepped out.

MS. NEWMAN: Oh, did he step out? Okay. Were there other people who have come in since we first started, who would like to testify? Great. And for people who haven't signed in, before you leave, if you wouldn't mind signing in on our sign-in sheet.

[speakers sign in]

MS. NEWMAN: Okay, thank you. We've got Leonard Levin.

MR. LEVIN: I'm Leonard Levin, Program Manager for Air Toxics Health and Risk Assessment at EPRI in Palo Alto. EPRI has reviewed the technical basis for EPA's proposed listing of lead as highly persistent and highly bioaccumulative. And our comments that will be submitted in writing, are restricted to the technical basis for that classification. We find EPA's classification of lead, to be…highly persistent and highly bioaccumulative, to be seriously in error, based on a review of the technical literature that we have done, and that apparently EPA has not done. The citations listed in the proposed rule making, appear to end in 1983, except for a few citations to summary literature that follows that. And they have apparently therefore missed much of the further progress on studies of lead in aquatic systems. Aquatic systems are of interest because that is where bioaccumulation will take place. There's no evidence of bioaccumulation in terrestrial systems. And in fact, we have evidence that lead uptake by

plants results in lower concentrations in the fruit and vegetable parts of the plants, than it is in the soil surrounding the plant.

The problem for persistence is clearly one of definition. EPA has chosen to redefine the biological term of biological persistence so that it takes in the entire environment, without regard to the compartments within the environment, including organisms and their compartments. In the ecological sense, persistence refers to the length of time an element or compound is available to an organism, or is retained in an organism or an ecological community. By definition, therefore, all crustal elements, such as lead and mercury and others, would fall into the definition of persistence in EPA's definition. But in the sense of persistence in a particular compartment, lead has very little evidence for being persistent in compartments of interest.

I will summarize EPRI's technical findings. These will be reported in writing by the due date for these. There are four in number. First, the use of a bioaccumulation factor for lead is inappropriate in light of recent methods and data. EPA has relied on older references concerning lead, some of these calculated bioaccumulation factors based on biased measurements of lead in water. The work of Clair Patterson of Cal Tech, and his students, have shown that many of these earlier measurements of lead, mercury, and other substances in aquatic systems, were biased high by detection limit problems with samples and meth-

ods, and by contamination through the sampling method. The use of clean suits and clean gloves developed by Patterson and Bill Fitzgerald and others, has resulted in better measurements, lower levels. Because of that, it would appear, from the use of the earlier data, as EPA has done, that what appeared to be low bioaccumulation factors, would result in toxic levels of lead in organisms, when in fact, the denominator in these bioaccumulation factors is a high number, giving you a low BAF. That high number is actually a much lower number when better methods are used. The result is that since the toxicity is a function of the numerator, the absolute level of lead that the organism takes in, it would appear that low BAF's will give you high toxicity, and that is in fact not the case.

Secondly, the BAF, bioaccumulation factors, and bioconcentration factors on which EPA has relied, are based on inappropriate experimental design. These numbers are determined from experiments in controlled tank settings, or micro-eco systems, and require that the organisms be dosed with lead levels, replicating what might occur in natural waterways. In natural waterways, field data that we cite, extensively over the last 20 years, shows field levels of 2 to 70 nanograms per liter of lead. The experiments cited by the EPA, use 20 to 1100 micrograms per liter, that is 4 to 6 orders of magnitude greater. And the result is that even at low bioaccumulation levels, and certainly for higher ones, one gets toxic lev-

els. But the experiments have been carried out at very high levels.

Third, lead has not been shown to significantly bioaccumulate in food fish. And that is, for the most part, food fish are the organisms of interest, in addition to shellfish that are consumed by humans and animals. Data indicate that a higher atrophic-level organism, such as a higher level fish, have progressively lower bioconcentration factors, and bioaccumulation levels, than lower levels. This indicates that lead, as one moves up in the food web, progressively is clearing from the organism. This is a completely opposite sense from the use of lead as being defined as highly bioaccumulative; in fact, it is not, in food fish. And fourth, is not significantly persistent in aquatic organs, using now the classic accepted definition of persistence. Measures of doses in organisms indicate that lead is not persistent in biological compartments; and thus, does not constitute an increased risk to these organisms, or those that consume them. When the change in definition is taken into account, and in fact this is a change in EPA's definition of persistence, from earlier use, and other sections of the Water Quality Act, it would appear that lead does not fit its definition of highly persistent and highly bioaccumulative, and that any levels of reporting based on that, require re-examination. We will be developing… We have developed these fairly extensively, along with a long list of references that postdate 1983,

which was apparently the end of EPA's look at the literature, to show the basis for these statements. And that will be turned into EPA in the next several weeks.

MS. NEWMAN: Thank you. I think we have Tom… Is it Martin?

MR. MARTIN: Good morning. My name is Tom Martin. I'm the Legislative Chairman for the Small Manufacturers Association of California. We have approximately 1000 members throughout the state, mostly small manufacturers in the metal working industries, and other industries as well. And I don't have anything formal, but I did want to make some comments on the fact. We're very concerned, our organization is very concerned when you look at a $7,000 cost to report. It's a tremendous burden, and this burden is not going to create new jobs. When you're dealing with small manufacturers, many of our members are lucky to have 10 employees, 10 to 15, 20 employees. So they don't have anybody who's going to be available, who's going to be professional, and is going to be knowledgeable on how to prepare these reports, so the manager is going to have to take on that burden. The manager is the owner. And the owner has other responsibilities if he's trying to maintain his business. But instead, he's going to have to devote a number of hours, and be concerned that he's going to make errors in these reports that could lead to fines and penalties. A lot of our members do not use lead, but a lot of…some of them do. Certainly some of them use lead solder. A lot

of our members are involved in the aerospace industry.

We're concerned that this type of a requirement, regulation, reporting regulation, will encourage many more companies to move off-shore, or across the border. It's so much easier when you don't have to put up with the types of regulations that we are constantly being bombarded with here in California, and throughout the nation. We're concerned that each new regulation becomes a spear aimed at the heart of the small manufacturers in California, and the US. We view this reporting requirement as another opportunity for bounty hunters to attack and extort from businesses, especially small businesses who don't have attorneys on staff, or attorneys on retainers. And just for your information, as a conclusion, this county, itself, has a lead program. And in that lead program, they are requesting employers who machine lead-bearing products, i.e. brass, to run blood tests on a regular basis, simply for machining it. So you can see how this is going to extend once we get to the level of 10 pounds, then the county can go after those employers with 10 employees, and 10 pounds. It's going to become a wave. We strongly recommend against it. Thank you.

MS. NEWMAN: Okay. Thank you. Daniel Cunningham.

MR. CUNNINGHAM: Hi. My name is Dan Cunningham. I'm Executive Director of the Metal Finishing Association of Southern California. I don't have any formal presentation

either. We will be submitting written comments through Al Collins and Kristen Rictor out of our Washington DC policy group. But our association represents 160 metal finishing companies in Southern California. We're the largest affiliate of the National Association of Metal Finishers. Virtually all of our members are small businesses, by the SBA definition. And we're very concerned about the cost of this proposed rule. There will be a large economic impact on our members, and a heavy paperwork burden on these small companies. We've used lead in this industry safely for over 100 years. Lead is… In hard chrome plating, anodes are placed in the side of a tank, to help the solution throw-on. And one anode weighs about 20 pounds. So this 10 pound rule… And there's several anodes in each tank, and then sometimes there's more than one tank in a shop, so it captures virtually everybody. And yet, the discharge limit to the local POTW's, is 2 parts per million of lead. And none of our members have ever had a problem meeting the lead discharge requirement, because the water goes through a waste treatment system at the plant, and then it goes on to the POTW, where it's treated. So there's virtually… The release is very minimum. And this rule seems to target the small businesses, with the elimination of the de minimis rule, and the lowering from 25,000 to 10 pounds… You know, the big guys that were over 25,000 pounds are already captured, and this seems to really get almost anyone who uses any amount of lead throughout

the year.

So we think the threshold is too low, and we think that there should be a de minimis exemption. And there has been no lead problem in this industry ever. I've been in the industry 20 years, and there's never been a problem. So again, you will be getting the written comments from our staff in Washington, and those are our comments. Yes.

MR. RICE: Could you tell us a little bit more about the anodes that are used. Are those… Do those anodes contain lead, or do they contain trace amounts of lead, or…

MR. CUNNINGHAM: In hard chrome plating, they're like…they're solid lead, ripple around, anodes that are probably 90% lead, 70 to 90% lead, something like that. Lead-tin-antimony type composition. They're very heavy. And they're lead, and they have a hook on them.

MR. RICE: And how prevalent is the hard chrome plating among your members? Is this a common process?

MR. CUNNINGHAM: It's fairly common. Well, it's used in hard chrome and decorative chrome. So probably 40% of our membership uses lead. And then there are some lead, and lead-tin plating operations, which are…and galvanizing operations, which are not that prevalent, but they are out there in the industry.

MALE VOICE 4: Anodized.

MR. CUNNINGHAM: And anodized.

MALE VOICE 4: Anodized [inaudible].

MR. CUNNINGHAM: Yes. You're right.

MALE VOICE 4: [inaudible]

MR. CUNNINGHAM: Yes.

MS. NEWMAN: Do you have any sense for maybe what percentage of the businesses in your industry already report under TRI? Or putting it the other way, you know, what percentage would be newly reporting to TRI because of this rule?

MR. CUNNINGHAM: A lot of them, because of some of the chemicals that they use, already report some of the larger quantity chemicals. I'd say this… Probably only about half of them report. But this would virtually capture the other half. And there are probably… According to AQMD, there are probably 500 metal finishers in Southern California, of which we have 160 members. So there are a lot in Southern California. It would capture a large percentage of the industry.

MS. NEWMAN: Okay, thank you. Eric Jensen.

MR. JENSEN: Good morning. I'm representing Halsteel, Incorporated. We basically are the epitome of a small business. I have come here today with one of my technicians out of the company, which me and him being gone, pretty much takes away 66% of our whole maintenance department, engineering departments, everything else. We are a very new company. This is our third anniversary this month. We manufacture nails. By the amount of steel that we go through and produce…or we are not producing yet, we are looking at producing our own wire. To get into this second aspect of it, we get into the quantities of high carbon and

low carbon steels, where the lead contents will vary in it. Currently, talking with some of the rod suppliers, they're saying it's approximately 60 parts per million, content on it. But that will also change, due to the hardness of the steels, a 10-18 steel, a 10-10 steel.

We have started as a small company. We're working up, we're trying to go through and compete a little more stronger with foreign markets, overseas markets, by helping produce our own wire, by reducing our costs so we can become more competitive in the marketplace. This year, by the amount of people that we have, the amount of people that we have in charge to do the additional operating expense, the reporting expense, the procedures on it, it makes it very difficult for a small business.

To get into another aspect of this, of the wire [unintelligible] process that we're looking at, that will take away from the cost that we can reduce our product by also. A nail manufacturer is very limited on what you can sell. A nail is a nail. We have to pride ourselves on the quality of it. If you have somebody coming in from foreign markets, overseas markets, something like that where they can bring the price down a little more… The business is very fickle. We try to get what we can, with the quality that we have, but price is a big factor inside every purchase. We, again, were informed very late. That's why we don't have as much representation here as needed. It's just, to the additional factors of it, the only way it would come into effect

with us, is the amount that we would be purchasing as raw materials. It is not a metal that is going to be sent out into the atmosphere by a lot of the processes. We go through, and cut a nail; we put in a plastic collation strip; we send it to a supplier; he sells to an end user; they nail it into a piece of wood to build our houses; and it's encapsulated there, from there on. So this is still an additional one where we're trying to go through and help lower our costs, to be more competitive with the larger companies. Every little setback like this does go through and hurt us that much more. That's pretty much what I have, because like I said, a point from an end user, from a very small business. So thank you.

MR. RICE: It sounds like the company is very small. Do you have more than 10 full-time employees?

MR. JENSEN: Yes, we do. We have grown every year, almost by 2-fold. We're up to approximately 45 full-time employees now. But by having those employees, that has helped us be competitive. We're trying to go through and help out in the market, and gain more of the market, but… The extra little step-backs keep pushing us, and make us decide whether we want to expand more, to hire more people, to continue with the expansion process.

MS. NEWMAN: Thank you. Martha Arguello, are you ready? Okay.

MS. ARGUELLO: My name is Martha Arguello. I represent Physicians for Social

Responsibility, a national organization of over 20,000 physicians. Here in California, we have 3,000 members. We fully support the EPA's plan to lower the threshold reporting levels for lead. We believe that increasing the public's right to know, allows us to make informed decisions about where we live, the water that we drink. As physicians, our primary concern is to do no harm. We support EPA's furthering policies of taking a precautionary approach, as we do not know all the science, and there is still debate about the full health impacts of lead in our water and our soil. Further, we feel that exposure to lead, particularly in low income communities that are surrounded by industrial areas, poses a significant health threat for multiple routes of exposure, and so we fully support the EPA's proposed plan. Thank you. We'll be preparing written documents that we'll send to you.

MS. NEWMAN: Okay. Thank you very much. If anybody does have a copy of their testimony, it would probably be helpful to our stenographers here. But if not, hopefully we've captured it all. Were there other people… Was there anybody else who wanted to speak? I think there was… Did you have questions? There were also some questions, I believe. Go ahead. Yeah.

FEMALE VOICE 2: He'll need to go to the podium, or we won't get him on [unintelligible].

MS. NEWMAN: Yes, do you mind going… I'm sorry. Do you mind going to the podium?

FEMALE VOICE 2: And if they could say their name.

MS. NEWMAN: Yes. Okay. And if you could just identify yourself so that they can get that also.

MR. PEEPLES: My name is Bob Peeples. And I guess I had two questions, as long as I've got to come up here. One is, is there a labeling requirement of some kind, that's going to help support the de minimis…the loss of the de minimis quantity exemption? MSDS's don't report lead at de minimis quantities, and they're not basing their definition of de minimis quantities on your rule. So I'm wondering how we would gather that information in order to make an informed decision on whether or not we need to report, without any labeling requirements with that.

The other was… I guess I sort of got lost in the whole…the logic of the persistence and bioaccumulation being the reason for regulating, and maybe you can fill me in on… Going through your slides, I was able to substitute carbon for lead in every one of them, and they were valid. And certainly compounds like cyanide and carbon monoxide, are far more acutely toxic than any lead compounds. So I was sort of lost on why that became an issue, why persistence and bioaccumulation potential became an issue, "Because there's a lot of it, it's therefore dangerous." And there wasn't a lot of addressing toxicity or dose response. By the same token, you know, the same carbon analogy, I'm wondering why metallic lead was

even really addressed. Certain lead compounds are toxic, but insoluble lead compounds would be much less… It sort of looks like we took a broad brush, and just said, "Well, let's just take all the lead." And that wouldn't work, again, you know, for things like carbon compounds. There's just so many compounds, it's hard to do that kind of broad brush. I wondered what approach they took.

MR. BOER: My name is Tom Boer, again. I'm an attorney for the Office of General Counsel at EPA. I mean I don't work in the program, but I can speak briefly about the labeling requirements and issues. And I think this is addressed a little bit more in the proposal itself. Under the proposal, there are no changes to the labeling requirements. EPA doesn't have authority to make changes to the OSHA regulations, so EPA can't, obviously, make changes to what's required under the MSDS's. The important thing is to understand the framework of how EPCRA reporting is required, in that you're only… As was stated before, you're only required to use reasonable estimates, or readily available information in final reports; you don't need to do additional testing or monitoring. And the information that seemed to be available, was that in some industries, there was additional information beyond information that was being provided on MSDS's, but below de minimis levels of what quantities were present for a variety of chemicals, including lead. So basically, the situation that EPA was trying to address here, was that if an industry

has readily available information, perhaps because they already monitor, or it's just widely known what percentage of lead may be in some type of mixture. This proposal would require the industry to use that information to report, and they would not be able to take de minimis. However, if the concentration is below de minimis, and you have no readily information, and you are unable to make reasonable estimates, you would still not be required to report, and would not be able to be held accountable for a failure to report, for levels that are below the current de minimis levels. Does that help?

MS. NEWMAN: That's on that one. Do you want me to try to address the other one?

MR. BOER: Yes. Why don't you.

MS. NEWMAN: I can try. I'm not sure I have the answer. [unintelligible] completely understood your other question, or if I… I'm not sure I can answer it totally, but regarding how we… I think your question was really how did we sort of pick lead, and maybe how did we pick the other PBT's, or the subject of the other rulemaking that I mentioned.

MR. PEEPLES: Well, it's late in the game to debate [unintelligible]. That part, [unintelligible] completely. But I wondered why they just did a broad brush, [unintelligible] in all-lead compounds.

MS. NEWMAN: Oh. All-lead compounds.

MR. PEEPLES: [unintelligible]

MS. NEWMAN: You know, I'm actually not that familiar with the science. What's that?

FEMALE VOICE 2: I'm sorry. Could you repeat that?

MR. PEEPLES: I only repeated what had.

MS. NEWMAN: Yes.

FEMALE VOICE 2: Okay.

MS. NEWMAN: Okay. The question was why did we address all lead compounds, rather than just looking at certain ones, I guess. And unfortunately, I really don't know the answer to that. I was going to say that there are… What I was going to say, is that there are…you know, a lot of compounds on the toxics release inventory, and other ones that aren't on it, that are persistent and bioaccumulative. We weren't able to look at all of those compounds. And so the PBT rule that we did issue, really is…reflects a subset of PBT's that are out there, and PBT's on the list. They were the ones that we had available data on. So it's possible that the Agency, at some point, would consider listing other PBT's, or looking at the ones that are currently on the list, to see if they warrant a lower threshold. So, this may not be the end of our review of PBT's, and what we may do with them with the toxics release inventory. But that doesn't address your specific question on lead. Tom, do you have any insight on that?

MR. BOER: I can address a little bit of it I think. I'm an attorney, so… I'm not a scientist, or a toxicologist, so I can't get too detailed, but I think I can address a little bit of your question, which is in order

to be listed on the list of toxic chemicals subject to EPCRA, Section 313, a chemical has to be toxic. So before EPA can evaluate a chemical for a lower threshold because of it's persistent and/or bioaccumulative characteristics, it has to meet the toxicity criteria that is required by Congress, due to statute. So I'm kind of starting at the top of… I think the concerns you raised were that any chemical that EPA is going to evaluate to lower thresholds for, because of its persistence or bioaccumulation, it has to have met the toxicity criteria, either through the addition of that chemical by EPA, to the EPCRA Section 313 list, or because Congress put that chemical onto the EPCRA Section 313 list.

I don't think I can talk too detailed about the bioavailability issues. I can say that my understanding of the bioavailability is that bioavailability ultimately goes to toxicity, not to persistence or bioaccumulation. And if the chemical is not bioavailable, so it's unable to express its toxicity, there's already a mechanism available through the metal policy that EPA published in the Federal Register, to petition EPA to de-list that compound entirely from EPCRA Section 313 reporting. So it would not only not be subject to the lower thresholds, but it wouldn't be subject to reporting at the higher thresholds either, since it would be off of the list because it wasn't available to express any toxicity.

MS. NEWMAN: Are there other questions?

MR. TWERDAHL: I am still very unclear as to the benefit that society in general will receive from this additional reporting requirements. I mean there's a… In business, one of the maxims is, "Don't develop new reports unless the value of the information that you're going to receive more than justifies the cost of obtaining it." And I have not really understood what the real benefits of additional reporting, especially in these very small quantities, would be.

MS. NEWMAN: Of course one of the dilemmas of TRI, is that we don't… One of the reasons for TRI, is that you don't have information out there, so that you know… Obviously, the reason we're asking for this information is it's not available right now. So it's hard to know in advance what information you're going to receive. But there has been a lot of concern expressed over the years that the reporting threshold for…the TRI reporting thresholds, especially for persistent bioaccumulative toxic chemicals, are too high, and that the public is missing some key Right-to-Know information about these compounds that persist in the environment for a long period of time, and that bioaccumulate. So we feel that it's important for people to obtain that information. As Martha Arguello pointed out, there are people that live in highly industrialized areas that are subjected to a lot of different toxic chemicals, and it's important for them to know where they're coming from. But as Cody pointed out, you know, one of the things that we are

looking at is not only the cost of this rulemaking, but also the benefits, and to the extent that we can get information from people through the public comment period about the benefits of the rule, you know, what kind of release reporting we may be seeing, that will help us in our final evaluation of how to proceed on this rulemaking. So it's a little hard to say.

MR. TWERDAHL: May I give you an analogy? Here in the State of California, we have a thing called Prop 65. Every grocery store, every hardware store, every gas station, every bar, virtually every establishment of all kinds, have to have Prop 65 warnings. And in theory, they sound like they make good sense. The public has totally absolutely tuned out. People totally ignore them. They have no value because they are such a part of everyday life. And without… If we continue, as a society, doing things that make no sense, and have reports for the sake of having reports, and go on fishing expeditions because we hope we're going to find something, it's a huge cost to society. And I think it's a huge mistake because we've become oblivious to it. We just don't care anymore. And that we ought to be focusing on the things that are really important rather than on things that are relatively minor. And I think that the… From the testimony I've heard today, from a whole variety of different industries, we're trying to create a problem that doesn't exist. We're trying to chase windmills.

There have been legitimate problems over the years, but we tend to then expand on them, and make them much worse than they were initially. I mean the asbestos cases, and the breast implant cases, and all sorts of other things, are perfect examples of where there has been massive, massive overkill by well-meaning people, and we're trying to correct problems. I mean the original problem with lead in paint, in low income housing, is a very serious problem. And I understand that the reason is, that lead, when it's encapsulated in paint, is very sweet. And so if there are children who do not have adequate diets, and so on, and they get a hold of paint, and eat it, it's a treat to them, and it can become highly toxic. And it is absolutely worthwhile that we eliminate all of those kinds of hazards. But you can carry it to an extreme, and I think this is the case where we're absolutely carrying it to extreme. And I hope this testimony from all the people here today, and all these very diverse businesses and walks of live, really indicate that. And I hope you all will take it very, very seriously in thinking about what really makes sense, and is this information really valuable, will it really be helpful to someone or something, or it's just more bureaucracy that's going to cost all of us more money, perpetuate government. We need to figure out ways of eliminating these kinds of things rather than having more of them. End of political statement.

MR. RICE: We will take those com-

ments on the benefits, or perceived lack thereof, very seriously. We've gotten comments on both sides of the issue. During the PBT rule, I believe that we received… What was it, over 20,000, 30,000 comments from individual citizens about their perception of benefits of lower reporting thresholds, and actually asking for lower reporting thresholds. So we'll consider that very carefully.

MS. NEWMAN: Other questions?

MR. MCDANIEL: My name is Paul McDaniel. I work for the Navy, up in Ventura County. And we reviewed the rule, and forwarded some comments to our chain of command. Since the government is required to report as if it were a manufacturing entity, we're drawn into TRI reporting. We figured that virtually every major facility would end up reporting. Or at the very least, calculating to see whether they reach the 10 pound threshold for lead. I had two questions. One, Leonard Levin's comments aside, if EP really believes lead to be a persistent bioaccumulative toxic…is there a reason that you addressed it separately from the PBT rule? And would that mean that you're still flexible about the threshold? Secondly, with regard to Jim Twerdahl's question about the usefulness of TRI reporting, have you considered applying a different de minimis where, for example, with combustion of coal, the lead ends up being distributed into the atmosphere?

MALE VOICE 5: [unintelligible]

MS. NEWMAN: Yes.

MALE VOICE 5: [unintelligible]

MS. NEWMAN: Why don't you repeat that about the de minimis.

MR. MCDANIEL: Okay, the second question. I guess we view the total lack of a de minimis of any kind as increasing the burden of calculating the thresholds, and of course reporting. And we were wondering whether you had considered applying a de minimis differently when the process using the lead is one like combustion, where it is going to distribute… Say, coal combustion distributes lead into the atmosphere, in some amounts. And that, to us, seems to actually perhaps merit removing the de minimis, or greatly lowering it, whereas other uses probably don't merit have no de minimis whatsoever. So if you could respond to those two questions. Thank you.

MS. NEWMAN: Your first question about why we addressed lead separately, we did actually ask for comment in the PBT proposal, on whether or not we should be adding lead. At the time of the proposal, or as we were developing the proposal, we didn't have all the data that we did a little bit later. So we actually got some new data in, following the proposal, that suggested to us that we really ought to add that to the list. So in terms of whether or not we're still flexible, this is a proposal, and we are going to be considering comments. So, yes, I guess we're still flexible.

Oh, okay, and the different de minimis. I wasn't intimately involved in the ac-

tual rulemaking, and the deliberations, but I don't think that we considered a different de minimis for different… I don't think we've ever considered different de minimis for different kinds of releases, right? The Congress established a definition of a release to the environment, and we have not ever sort of played around with different releases, and establishing different de minimis.

MR. MCDANIEL: [unintelligible]

[Start Tape 2]

MR. BOER: Well, the de minimis is… The removal of the de minimis exemption is one of the areas that the Agency has asked for comment on. You know, in terms of evaluating different de minimis options if the Agency were to choose a different de minimis level. It would help, in your comments if you could suggest what that level would be, and what the rationale would be for applying it to one process versus another process. If you could just be as specific as you can in your written comments, that would help us. But like Amy said, for both of these issues, this is a proposed rule, and at this point, we're taking comments on all the issues that were brought up, and are considering any comment that's submitted.

MS. NEWMAN: Are there other questions? Or anybody else want to make any comment? Well, we'll be… We're available if anybody has…wants to ask us anything. Oh. Go ahead.

MR. MCDANIEL: [unintelligible]

MS. NEWMAN: Article exemption.

MR. MCDANIEL: The article [unintelligible].

MALE VOICE 6: Can you repeat the question?

MS. NEWMAN: Oh, okay. The question was, in the case of the gentleman from the nail manufacturing company, Halsteel, would he be exempted from TRI reporting because of the article exemption. Right? I don't think so.

MR. BOER: I think we would have to have more information about exactly how the process works, to be able to know. I'm not quite sure that from what I understood about the process, I could answer that. What do you think, Cody?

MR. RICE: Maybe you could just talk about… Can you talk about the article, like large pieces?

MR. BOER: I cannot [unintelligible].

MS. NEWMAN: What we're talking about, is that we're not sure, without knowing a little bit more about his situation, whether or not he would be.

MALE VOICE 6: He even talked about the beginning of the process, where he's going to make his own wire.

MR. BOER: Well, if he's making his wire, probably not.

MALE VOICE 6: Otherwise, he [unintelligible]. [unintelligible]

MR. BOER: Right.

MS. NEWMAN: Okay. I don't know whether you want to elaborate on that, or…

MR. BOER: I think it'd probably be

better. I mean, I just…

MS. NEWMAN: That's okay. Lawyers are better at hedging.

MR. BOER: I know. I mean I think that depending upon the… I mean I think depending upon exactly what the process is, it's possible that the facility could qualify for the article exemption. Making wire, that's probably correct. He probably would not qualify for the article exemption. Making nails from wire that's already at the diameter, equal to the diameter of the original wire, may qualify for the article exemption. Of course, it would… I mean there are a number of factors that would come into play. Whether or not the half pound quantities exceeded, depending, I suppose, upon the number of nails they manufacture, and the amount of material that's removed. But it's possible that it could qualify for the article exemption.

I mean I think it's also important to note that there are a number of "otherwise use" exemptions that are maintained under the current proposal for the PBT rule, and these could impact whether or not a facility might be required to report or not. One that comes to mind, for instance, is the intake water exemption. So this was brought up, I think, by… I don't remember now, but it was brought up by one commenter. So for instance, you're not required to take into account ambient levels of lead, for instance, that would be in water that you receive from off site, if you took it in from either the municipality, or from a river.

So that type of situation would be exempted. So it's just something else to consider when you're trying to determine whether or not you might trip the 10 pound threshold for lead, to make sure that you consider the available exemptions.

MS. NEWMAN: For people that have very specific questions about their facilities, and the applicability of the TRI requirements to them, we do have a hotline, the EPCRA Superfund Hotline that you can call and ask specific questions about your facility, and how the requirements apply to you. This number actually was in the FR notice, if you got it, and probably any other notice that you got. But in any case, it's a toll free number, 800-535-0202, if you need to ask further questions about specific situations. Any other questions? Well, we really appreciate everybody taking time to come, and these comments were very helpful. We of course would really appreciate your written comments as well, if you have time to submit those before December 16th. Do you have anything else to add? Well, thank you again. We appreciate it.

[break]

MR. GREENE: Do you need identification?

MS. NEWMAN: Yes, if you could just identify yourself. Thank you.

MR. GREENE: My name is Alan Greene. I work with Davis Wire in Hayward, California. I'd like to bring up several issues that we have concerns about. The proposed rules lower-

ing the lead reporting threshold, we feel are going to impact numerous small businesses that we supply steel wire to. The calculations that we have at this present time, or that the steel wire producing industry, the wire that we have, contains 6 part per million, lead. That's for the grade 1070. It varies slightly in between the grades, but… At that level, of 6 parts per million, companies that use 83 tons of our steel wire per year, will now be required to report under these reporting guidelines. Some of those companies would include vineyards, manufacturing of pail handles. These companies are using upwards of 100 to 150,000 pounds. I'm sorry, 150,000 tons per year. And that will bring their lead reporting well over the 10 pounds. The economic impact on them is going to be significant. A lot of them don't have an income over $700,000. And the estimates that are coming out of the AWPA, which we agree with, are that those costs are going to exceed $7,000 per year to report. That includes the added medical expenses they have to go through, the monitoring processes they have to go through. The processes that they use, or the material that they're using, is not going to significantly add to the environmental impact. The lead is bound. A small percent. And for these reasons, we really believe that these thresholds are set too low, and that the de minimis reporting needs to stay. A lowering of the de minimis amount, we're trying to work on right now, and we will put in our written comments, as far as a suggestion on what that

should be.

When we manufacture our wire, we use lead in a significant amount. And although we take all steps necessary, and that we can, to remove the lead from the wire, there is still going to be trace amounts that go through the manufacturing process. We're also looking at the trace amounts that are in the different compounds we use for drawing the wire, and actually lubricating it, because there are also the possibility of adding small amounts of lead into this. All of these things are going to impact on those small businesses that receive our product. We're already reporting on this lead. So for them to turn around and double report, based on what we're doing already, seems to be almost like a double slam, if you would.

You had asked for comments on the biannual reporting. I don't believe that biannual reporting is going to provide a significant relief from our reporting costs. We still have to maintain the same processes to get that information, so we're talking about however many specific hours that you talk about, filling in the form. So there's very little impact there for us. The elimination of range reporting for the Form R's, this could have a significant added expense, especially for the smaller businesses that do business with us. They will be forced to hire outside consultants to conduct the necessary analysis for compiling exact figures, and they won't be able to use their own expert knowledge to give you the

ranges that are now allowed. Your estimates are that there's approximately 8,100 businesses that would be effected; of which, 5,100 would be first time filers. We believe that that number is very low. Where was that… I think it was 2…220 wire producing companies in the US; if each one had five customers, then doing the math there, you're going to have… And we have a lot more than five customers. So your numbers are real low there.

Some of the customers that I'm talking about, that will give you a general idea; vineyards, our plant alone, on a daily basis, we're making approximately 25 to 50,000 pounds a day of steel for the vineyards to use. Like the paint can handles that we have on the top of the cans, we make in excess…for… Now this is just for one producer of those, we make in excess of 25,000 pounds per day for him. And this is a very small business. And he's just got five or six people. He's using a lot of wire. So we believe these rules, as they are, will have a significant economic, and negative, impact on our industry and our customers. I noticed in your presentation that you had an exemption there for the stainless steel, brass. I believe for steel products that we're talking about, that exemption might work to our benefit, without significantly harming the environment, or having any negative adverse impacts. So it might be good to look at expanding those areas for businesses that fall in those areas. That's all I have to say. Thank you.

MR. RICE: Can I ask a couple of questions?

MR. GREENE: Uh-huh.

MR. RICE: Is the wire that you're manufacturing, is that stainless steel, or is it a different kind of steel?

MR. GREENE: No, it's not stainless steel. It's regular steel. There are two ways to get that steel. One… If you look at the designator on it, for instance I10-70 steel, it has a higher carbon content. In our industry, if you put that…let's say a 10-70, with an ell in the middle, then that's made with a significant amount of lead, and we do not use those. Some companies do, and that would change all of these figures significantly. But those are not in general use, to my knowledge. We use zero. So the amount of lead that's in those wires, is small.

MR. RICE: Are you aware that the reporting is required from facilities in certain industries, and agricultural industries are not covered by TRI. So farms and vineyards, because they're not in subject SIC codes, would not be subject to reporting.

MR. GREENE: No. That one I wasn't, no.

MS. ROSSETOT: Wouldn't his customers be exempt because of the article exemption? If all they're doing is [unintelligible] and cutting the wire, it's an article, and it wouldn't be covered under the [unintelligible].

MR. RICE: The question from the audience was, wouldn't the customers be covered

by the article exemption because the wire is being cut and shaped, and retains it's…does it retain its exemption under the article exemption. And I think the way that we've been dealing with questions about the specific circumstances at facilities, is that we really need to know more of the details about how it's used at the specific facilities. And we have an EPCRA hotline number that you can call, or, you know, if the person…the company that you're supplying to would like to call, they can discuss the specifics of their situation, and they can figure out of those sorts of exemptions would apply to those specific circumstances. And that number is in the Federal Register notice for this meeting.

MS. ROSSETOT: [unintelligible]

MR. RICE: The question from the audience is, isn't 6 parts per million below the de minimis concentration. Part of the lead proposal is to remove the de minimis exemption for the reporting of lead and lead compounds.

MS. NEWMAN: Would you mind just talking again a little bit about what your…what the companies that you supply to, make? You did mention the pail handles, were there other things?

MR. GREENE: Bedsprings. Sealy Posturepedic. Any kind of spring material. Well, it's a wide list.

MS. NEWMAN: Okay.

MR. GREENE: Let me think here. Steel rod for concrete reinforcement. Bedsprings. And anything that uses a coil spring,

basically would be one of our customers. Galvanized wire for fencing. So we make a lot of different types of fencing. Not just for agricultural use, but also for industrial use. Barbed wire. There's a wide range of companies.

MS. NEWMAN: I'm just wondering, sort of sitting and wondering what SIC code they would fall into. You may… I don't know if you would know, have any good…

MR. GREENE: I don't know off hand, no.

MS. NEWMAN: Yes.

MR. GREENE: I'll try to address that when we…

MS. NEWMAN: One other thing that you mentioned, I thought, was something about how facilities were going to have to do some monitoring, and I don't know if you're aware, but we don't require monitoring. If monitoring data is available, the facility already does any kind of monitoring, and that provides the kind of data that we need for TRI, then they should use that. But they're not required to do monitoring.

MR. GREENE To get some of the figures, they're going to have to do something, because right now, they're doing nothing because they're not having to report anything. So that's going to have to start from scratch for them.

MS. NEWMAN: Under TRI, we require that facilities use the best readily available information. So I just wanted to clarify that we're not requiring monitoring. Thank you very much.